

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of

THE FEDERAL REPUBLIC OF NIGERIA,

Applicant,

For an order pursuant to 28 U.S.C. § 1782 permitting
Applicant to issue subpoenas in aid of foreign
proceedings to:

VR ADVISORY SERVICES, LTD., VR ADVISORY
SERVICES (USA) LLC, VR GLOBAL ONSHORE
FUND, L.P., VR ARGENTINA RECOVERY
ONSHORE FUND II, L.P., JEFFREY JOHNSON, and
ASHOK RAJU,

Respondents.

Case No: 1:21-mc-7

**APPLICATION FOR AN
ORDER PURSUANT TO 28
U.S.C. § 1782 TO CONDUCT
DISCOVERY FOR USE IN
FOREIGN PROCEEDINGS**

The Federal Republic of Nigeria (“Applicant”), by its undersigned counsel, Meister Seelig & Fein LLP, respectfully moves this Court for an order pursuant to 28 U.S.C. Section 1782 (“Section 1782”) permitting Applicant to issue subpoenas pursuant to Federal Rules of Civil Procedure 26 and 45 (the “Application”) directing VR Advisory Services, Ltd, VR Advisory Services (USA) LLC, VR Global Onshore Fund, L.P., VR Argentina Recovery Onshore Fund II, L.P., and directors and officers, Jeffrey Johnson, and Ashok Raju (collectively “VR Respondents”) to produce documents and provide deposition testimony for use by Applicant in a foreign proceeding against Process & Industrial Developments Ltd. (“P&ID”) in the following proceedings pending before the High Court of Justice, Business and Property Courts of England and Wales Commercial Court (the “English Court”): (1) *In an Arbitration Claim and In the Matter of Application Under S.67 and S.68 of the Arbitration Act 1996 Between: The Federal Republic of Nigeria and Process & Industrial Developments Limited*, Claim Number: CL-2019-000752 (the

“Set Aside Proceeding”); and (2) *In an Arbitration Claim and In the Matter of Application Under S.67 and S.68 of the Arbitration Act 1996 Between: Process & Industrial Developments Limited and The Federal Republic of Nigeria*, Claim Number: CL-2018-000182 (the “Enforcement Proceeding” and together with the Set Aside Proceeding, the “English Proceedings”).

As set forth in the accompanying memorandum of law, this Application meets all of the statutory requirements necessary to obtain discovery under Section 1782, and the discretionary factors weigh in favor of granting the Application authorizing Applicant to conduct discovery in this district in aid of the English Proceedings. VR Respondents can be found in this district. Applicant seeks the discovery for use in the English Proceedings, which qualify as foreign proceedings within the meaning of Section 1782. VR Respondents are not parties to the English Proceedings. Applicant is not attempting to circumvent any requirements of the English Court. The English Court is receptive to discovery obtained pursuant to Section 1782, and the requested discovery is not unduly burdensome or intrusive. In further support of this application, Applicant relies on its accompanying memorandum of law, the Declaration of Shaistah Akhtar with its accompanying exhibits, the Declaration of Alexander D. Pencu with its accompanying exhibits, and the Declaration of Christopher J. Major. A proposed Order is attached hereto.

This is Applicant’s second application pursuant to Section 1782 for discovery from VR Respondents. The prior application, *The Federal Republic of Nigeria et al. v. VR Advisory Services, Ltd. et al.*, Case No. 20 Misc. 209 (PAE) (S.D.N.Y.) (the “Prior Application”) was filed as an *ex parte* application on May 12, 2020, for discovery in aid of criminal investigations and prosecutions in Nigeria (the “Nigerian Proceedings”). On May 13, 2020, the Prior Application was assigned to the Honorable Paul A. Engelmayer.¹ On May 14, 2020, Judge Engelmayer granted

¹ The Prior Application included two respondents that are not named in this application, VR Capital Group Ltd. and Richard Deitz.

the Prior Application authorizing Applicant and its Attorney General, Abubakar Malami, to “take discovery relating to the issues identified in its application from VR Respondents in accordance with the Federal Rules of Civil Procedure and the Rules of this Court,” and ordered Applicant and Attorney General Malami to serve on VR Respondents a subpoena duces tecum for a deposition and the production of documents identified in the form subpoena submitted with the Prior Application (the “1782 Order”).² On June 26, 2020, VR Respondents moved to vacate the 1782 Order and quash the subpoenas served pursuant to the 1782 Order (the “Motion to Vacate”). On November 6, 2020, the court (Engelmayer, J.) granted the Motion to Vacate (the “Vacate Order”). The Vacate Order was appealed to the Second Circuit on November 17, 2020 (the “1782 Appeal”). The 1782 Appeal, *The Federal Republic of Nigeria, et al. v. VR Advisory Services, Ltd., et al.* (Case No. 20-3909), remains pending.

Simultaneous with the filing of this Application, Applicant served a copy of the Application and all supporting documents on counsel for VR Respondents.

WHEREFORE, the Federal Republic of Nigeria respectfully requests that this Court enter an order:

1. Granting the Application for discovery from the VR Respondents pursuant to Section 1782;
2. Authorizing Applicant to take discovery relating to the issues identified in its application from the VR Respondents, in accordance with the Federal Rules of Civil Procedure and the Rules of this Court, including by serving on the VR Respondents a subpoena for deposition testimony and the production of the documents listed in Exhibits 44 through 49 to the Pencu Declaration;

² See, Prior Application, 20 Misc. 209 (PAE) (ECF 10).

3. Directing VR Respondents to comply with the subpoenas in accordance with the Federal Rules of Civil Procedure and the Rules of this Court;
4. Appointing the undersigned to issue, sign and serve the subpoenas;
5. Providing that this Court shall retain such jurisdiction as is necessary to effectuate the terms of such subpoenas;
6. And providing such other and further relief to the Applicant as the Court deems just and proper.

Dated: January 8, 2021
New York, New York

MEISTER SEELIG & FEIN LLP

By: /s/ Alexander D. Pencu
Alexander D. Pencu, Esq.
Christopher J. Major, Esq.
Austin D. Kim, Esq.
125 Park Avenue, 7th Floor
New York, NY 10017
Tel: (212) 655-3500
Email: adp@msf-law.com
cjm@msf-law.com
adk@msf-law.com

*Attorneys for Applicant Federal Republic of
Nigeria*